



AN ACT REVISING THE CIVIL LIABILITY PROVISIONS FOR MULTIPLE DEFENDANTS; CLARIFYING THE PROCESS FOR MULTIPLE DEFENDANTS IN AN ACTION FOR NEGLIGENCE FOLLOWING THE SETTLEMENT OR RELEASE FROM LIABILITY OF A PERSON; AMENDING SECTION 27-1-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the acquisition of reasonably priced medical malpractice insurance coverage is a factor in attracting and retaining medical providers to Montana; and

WHEREAS, the Legislature has determined that a shortage of health care providers in the state and an inability to attract health care providers to the state would pose a serious threat to the health, welfare, and safety of Montanans; and

WHEREAS, the number of insurance carriers that provide liability insurance for hospitals, physicians, and dentists has declined significantly in the past decade; and

WHEREAS, insurance premiums for liability insurance for health care providers have historically forced physicians and other providers in Montana to consider either curtailing certain medical services or relocating to other states where premiums are stable; and

WHEREAS, Montana and its residents have a compelling state interest in ensuring that Montana residents receive quality and reasonably priced health care; and

WHEREAS, recently enacted federal health care reform failed to address tort reform measures, defensive medicine costs, and abusive litigation practices; and

WHEREAS, under the current system of comparative negligence, a defendant may settle or be released from liability only to be brought back into court if any remaining defendants choose to proceed to trial; and

WHEREAS, the Legislature believes that a claimant who enters into a settlement or otherwise releases a party from liability does so because the claimant has made a considered judgment that the agreement is in the claimant's best interests; and

WHEREAS, the Legislature intends that the settlement amount paid by persons who settle or are released from liability may be considered by remaining defendants in determining whether to proceed to trial to

have the settled party's degree of negligence considered or to elect a dollar for dollar offset of the amount of settlement; and

WHEREAS, the Legislature encourages dispositions of cases that are fair to all sides by accurately reflecting potential liability, accurately compensating claimants for injury, providing settling parties their bargained-for peace, or allowing the parties to proceed to trial on the merits.

THEREFORE, it is the intent of the Legislature to clarify that in multiple defendant cases based in negligence, the parties have a clear choice of how to proceed following the settlement or release from liability of a party.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-703, MCA, is amended to read:

"27-1-703. (Temporary) Multiple defendants -- determination of liability. (1) Except as provided in subsections (2) and (3), if the negligence of a party to an action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) A party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the percentage of negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the percentage attributable to the claimant and to any person with whom the claimant has settled or whom the plaintiff has released from liability.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of a party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, and third-party defendants. The liability of

persons released from liability by the claimant and persons with whom the claimant has settled must also be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the percentage of negligence of all persons listed in this subsection. Nothing contained in this section makes any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to that party.

(6) (a) In an action based on negligence, when a claimant has settled with a person or released a person from liability, a defendant may, ~~assert as a defense that the damages of the claimant were caused in full or in part by a person with whom the claimant has settled or whom the claimant has released from liability.~~ within a reasonable time after having received notice of settlement or release, request in writing the settlement or release document from the claimant. The claimant shall promptly provide the settlement or release document and indicate to the defendant whether the settlement or release is to be kept confidential. Within a reasonable time after reviewing the settlement or release document, the defendant may make and serve on all parties to an action a written election to either:

(i) assert as a defense that the damages to the claimant were caused in full or in part by a person with whom the claimant has settled or whom the claimant has released from liability; or

(ii) offset any award of damages against the defendant by an amount equal to the amount of settlement or other compensation provided to the claimant by the person with whom the claimant has settled or whom the claimant has otherwise released from liability.

(b) (i) Except as provided in subsection (6)(b)(iii), if a defendant elects to proceed under subsection (6)(a)(i), the defendant shall comply with the procedures for asserting the defense pursuant to subsections (6)(g) and (6)(h).

(ii) If a defendant elects to receive an offset as provided in subsection (6)(a)(ii) and the settlement is confidential, the defendant making the election to receive the offset shall abide by the terms of the confidentiality provision of the settlement except as necessary to obtain the offset. The offset must be applied against any award of damages to the claimant, and any resulting judgment against the defendant must be reduced by the amount

of the offset. A defendant electing to receive an offset may not present a defense at trial that the person with whom the claimant has settled or the person whom the claimant has released from liability is at fault in the matter.

(iii) If there are two or more nonsettling defendants, the defendants shall mutually agree, within a reasonable time after having received notice of settlement or release and having received the settlement or release document, whether to proceed under subsection (6)(a)(i) or (6)(a)(ii). If the nonsettling defendants cannot jointly agree on an option under subsection (6)(a)(i) or (6)(a)(ii), then the nonsettling defendants shall proceed under subsection (6)(a)(i).

~~(b)~~(c) In determining the percentage of liability attributable to persons who are parties to the action, the trier of fact shall consider the negligence of persons released from liability by the claimant or with whom the claimant has settled. A finding of negligence of a person with whom the claimant has settled or who has been released from liability by the claimant is not a presumptive or conclusive finding as to that person for purposes of a prior or subsequent action involving that person.

~~(e)~~(d) Except for persons who have settled with or have been released by the claimant, comparison of fault with any of the following persons is prohibited:

- (i) a person who is immune from liability to the claimant;
- (ii) a person who is not subject to the jurisdiction of the court; or
- (iii) any other person who could have been, but was not, named as a third party.

~~(d)~~(e) A release of or settlement entered into by a claimant constitutes an assumption of the liability, if any, allocated to the settled or released person. The claim of the releasing or settling claimant against other persons is reduced by the percentage of the released or settled person's equitable share of the obligation, as determined under subsection (4).

~~(e)~~(f) A defendant who alleges that a person released by the claimant or with whom the claimant has settled is at fault in the matter has the burden of proving:

- (i) the negligence of the person whom the claimant has released or with whom the claimant has settled;
- (ii) any standard of care applicable to the person whom the claimant released or with whom the claimant settled; and
- (iii) that the negligence of the person whom the claimant has released or with whom the claimant has settled was a contributing cause under the law applicable to the matter.

~~(f)~~(g) A defendant alleging that a settled or released person is at fault in the matter shall affirmatively

plead the settlement or release as a defense in the answer. A defendant who gains actual knowledge of a settled or released person after the filing of that defendant's answer may plead the defense of settlement or release with reasonable promptness, as determined by the trial court, in a manner that is consistent with:

(i) giving the defendant a reasonable opportunity to discover the existence of a settled or released person;

(ii) giving the settled or released person an opportunity to intervene in the action to defend against claims affirmatively asserted, including the opportunity to be represented by an attorney, present a defense, participate in discovery, cross-examine witnesses, and appear as a witness of either party; and

(iii) giving the claimant a reasonable opportunity to defend against the defense.

~~(g)~~(h) If a defendant alleges that a settled or released person is at fault in the matter, the defendant shall notify each person who the defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to each settled or released person at the person's last-known address by certified mail, return receipt requested. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-703. (Effective on occurrence of contingency) Multiple defendants -- determination of liability. Each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of."

Section 2. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 0531, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2011.

President of the Senate

Signed this _____ day
of _____, 2011.

HOUSE BILL NO. 531

INTRODUCED BY S. FITZPATRICK

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